

СЕКЦІЯ 8.

ПИТАННЯ ОРГАНІЗАЦІЇ ТА ДІЯЛЬНОСТІ СУДОВИХ, ПРАВООХОРОННИХ ОРГАНІВ ТА АДВОКАТУРИ

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FREE LEGAL AID IN THE UNITED KINGDOM

England and Wales have established Legal Aid service. Firstly legal aid was introduced by Legal Aid and Advice Act 1949 by the lab our government¹. Legal aid is a service, which is provided for people who cannot afford to pay for their legal advice or hire a lawyer in order to represent a person in court. Now, the provision of legal aid is governed by the Access to Justice Act 1999². There are certain things, which a person who is applying has to do. One of the main reasons for an application to be successful, a case needs to be eligible for this type of aid and financial position of a person has to be appropriate³. Following on, some people could take advantage of this aid and it could be given to a person who does not need it as compared to someone else. Therefore, a problem that arises is that some people claim for aid even though they could afford to pay, but some people with low income are not getting what they could and should get. Consequently, the allocation of legal aid is not fair?

In order to receive legal aid a person has to go through certain steps, in order to prove that he is eligible for it. Firstly his type of case either civil or criminal is considered and after his financial position will be looked at. Legal aid might not cover all the costs of the case, a person might be asked to pay some costs upfront or pay after the case if he wins money or property⁴. In civil cases, like: debt, family or housing problems. A person would have to show that he could not afford to pay such expenses and that the issue occurred is serious. In order to prove person's financial condition he would

¹http://www.legislation.gov.uk/ukxi/1973/2035/pdfs/ukxi_19732035_en.pdf Date of access 21 Jan.

²<http://www.legislation.gov.uk/ukpga/1999/22/contents> Date of access 21 Jan.

³<https://www.gov.uk/legal-aid> Date of access 21 Jan.

⁴<https://www.gov.uk/legal-aid/eligibility> Date of access 23 Jan.

have to present his income, benefits, savings and property and as well his or her partner with whom a person is living. If person's actual gross income in the past month or his or her partner exceeds J2,657 then the client is not eligible for free legal aid¹. As well if a client or his partner have capital and if it exceeds J8,000 then the person is not eligible for it². However person's financial condition is not taken in cases involving: mental health tribunals, child abduction and children in care. Different situation is for criminal cases, "Legal aid in criminal proceedings is given only to those charged with offences and is not available to persons wishing to bring a prosecution"³. In general a person has to consult with a solicitor in order to assess whether he is eligible for legal aid. As well a person has the right to get free legal advice if he is questioned at the police station not depending on his financial circumstances, unless the offence is considered to be very serious⁴.

In recent years we can see a tendency that from year to year, legal aid in England suffers severe cuts. These cuts are in terms of finance support, towards legal aid and as well availability to citizens. A trend could be seen, nowadays the demand for free legal aid is increasing, and however the supply of it, is decreasing as before more people were able to get free legal aid and compared to nowadays this number has dropped significantly. From the data that was presented by the government it could be seen that financial support towards legal aid agency has dropped significantly. Overall annual legal aid expenditure in years 2006-2007, (J2,400m) was spent in real terms which means that inflation is adjusted and compared with years 2016-2017, (J1,530m) was spent⁵, a significant decrease was seen by almost a billion of pounds. As well, work load and expenditure in criminal and civil legal aid has decreased⁶.

Following all of these cuts with legal aid, it will certainly to a certain extent influence citizens. Consequently, less people will be able to get this aid as the conditions that have to be met, were tightened. As with reference to the Ministry of Justice it considers legal aid to be "essential part of the justice system, but can never lose sight of the fact it is paid for by taxpayers and resources are not limitless"⁷. This suggests that the allocation of free legal aid will be controlled even more and therefore will be given less and to those who need it the most. However, it might suggest that cases like divorce will get less or even no help at all. If we consider that legal aid provides justice

¹Charles Wild and Stuart Weinstein, *Smith and Keenan's English Law* (17th edn, Pearson 2013) 147-148

²*Ibid.* 148

³*Ibid.* 180

⁴<https://www.citizensadvice.org.uk/wales/law-and-courts/legal-system/taking-legal-action/help-with-legal-costs-legal-aid/#h-legal-aid-for-criminal-cases> Date of access 26 Jan.

⁵https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/647983/legal-aid-statistics-bulletin-apr-jun-2017.pdf Date of access 27 Jan

⁶https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/667687/Legal-aid-statistics-in-England-and-Wales-bulletin-Jul-to-Sep-2017.pdf Date of access 27 Jan.

⁷<http://www.bbc.co.uk/news/uk-21668005> Date of access 27 Jan.

for all, however now it is a big question, as even before there were people that demand free aid, but unfortunately did not receive it due to some circumstances. As we can see now that this number will even increase because simply there would not be enough finance for it, there would be more declines for legal aid and there will be people who will be unprotected because they cannot afford to hire a lawyer or ask for legal advice. If we look at some areas of civil law from which government had removed funding, such as: personal injury and some clinical negligence, some debt, housing issues etc.¹. This type of cases do need finance, if we consider personal injury or even clinical negligence this could lead to some serious consequences, as if a person was mistreated in the hospital and he would want to take some legal actions with it, he would not be able to do it and it could be a very poor person who would not have an opportunity to pay for legal advice, so does it mean that only a person who has money would be able to express his opinion in a legal context. This kind of reforms, in my opinion are directed in the way of making free legal aid less available to people. As some people that claim for free legal aid even though they are able to pay for it, which means that some people who need it the most, do not get this aid, which suggests that the allocation of free legal aid is not fair, it does not provide justice for all. Following on from the fact that less people will get legal representation this might mean that if a person will represent himself in court then it will slow the proceeding. Legally unqualified person would not know the procedure that his case should follow; this might be simply that he would not be able to accumulate necessary documents. Which also leads to injustice because a person that was able to get free legal aid would not face this problem, therefore a case could be lost because an advice from a lawyer could change a lot, it could direct a person in different way. Consequently, a person with legal aid will have an advantage over someone, which did not.

In conclusion, in England legal aid went through a lot of reforms starting from the year 1949 when it was first introduced and the last cuts in 2013. Considering what has happened to legal aid over 69 years of its existence, it could be concluded that significant changes happened. In terms of financial support, it was decreased by almost a billion of pounds, therefore the amount of people that receive legal aid had to decrease and it did. The conditions were made stricter, therefore some people that would receive free legal aid before, nowadays are left without, so legal aid does not provide justice for all as some people that demand it are not considered in this program, they are left out.

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**УТВОРЕННЯ ВИЩОГО
АНТИКОРУПЦІЙНОГО СУДУ В УКРАЇНІ**

У зв'язку з прийняттям нового Закону України «Про судоустрій і статус суддів» із системи судоустрою зникають раніш існуючі вищі спеціалізовані суди. Так, зокрема, ліквідовуються такі суди як Вищий спеціалізований суд з розгляду цивільних і кримінальних справ, Вищий адміністративний суд та Вищий господарський суд. Проте, внаслідок судової реформи з'являться нові судові інстанції, аналогів яких ще не було в Україні: Вищий суд з питань інтелектуальної власності; Вищий антикорупційний суд. Вони хоч і називаються вищими, проте здійснюють правосуддя як суд першої інстанції у справах, що віднесені до їх компетенції. А переглядати та перевіряти обґрунтованість і законність їх рішень буде вже Верховний Суд. В зв'язку з появою нових судів виникає необхідність дослідження особливостей їх утворення. Ми акцентуємо увагу на особливостях утворення Вищого антикорупційного суду.

Утворення антикорупційного суду в Україні не є новою ідеєю, оскільки ідея створення спеціалізованих антикорупційних судів уже багато років реалізовувалась в різних формах в цілому ряді країн світу. Так, зокрема, спеціалізовані судові органи для розгляду корупційних справ (будь то окремі судді, спеціалізовані суди чи палати судів) утворені, принаймні, у 17 юрисдикціях (хоча в окремих випадках такі судові органи уповноважені розглядати і інші категорії справ поряд з корупційними): Філіппіни, Пакистан, Хорватія, Болгарія, Мексика, Словаччина та інші [1].

Таким чином, можемо стверджувати, що досвід функціонування спеціалізованих антикорупційних установ у багатьох державах світу вже є. А тому, внаслідок того, що рівень корупції в Україні суттєво збільшився, а загальні суди ухвалюють надзвичайно мало обвинувальних вироків, тому потреба в спеціалізованому антикорупційному суді в Україні є надзвичайно ваговою.